

ADVISORY OPINION NO. 95-23

ISSUED BY THE

WEST VIRGINIA ETHICS COMMISSION

ON MAY 4, 1995

GOVERNMENTAL OFFICIAL SEEKING OPINION

A Legislator

OPINION SOUGHT

Is it a violation of the Ethics Act for a Legislator to have an interest in a contract with a State Agency?

FACTS RELIED UPON BY THE COMMISSION

A member of the Legislature is also an attorney and partner in a law firm. Another law firm plans to seek a contract with a state agency to do collection work on a contingent fee basis for that agency. The firm has approached the requester's firm to see if it would act as co-counsel in the litigation efforts. To date the member has had no contact with any state official regarding the proposal of the other firm.

PERTINENT STATUTORY PROVISIONS RELIED UPON BY THE COMMISSION

West Virginia Code Section 6B-2-5(b)(1) states in pertinent part that...a public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

West Virginia Code Section 6B-2-5(d)(1) states in pertinent part that...no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which such official or employee may have direct authority to enter into, or over which he or she may have control:... Provided, however, that nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body...

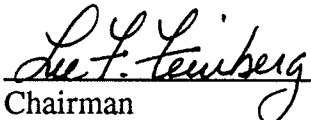
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In considering this request, the Ethics Commission has analyzed the facts presented in light of the statutory violations contained in the Ethics Act. The Commission has determined that there is no provision of the Ethics Act which would prohibit a legislator's law firm from serving as co-counsel with another firm which may obtain a contract to do legal work for a state agency.

West Virginia Code Section 6B-2-5(d)(1) prohibits public servants from having an interest in a public contract over which they have authority or control. However, this provision contains an explicit proviso that exempts members of the Legislature from its scope. Consequently, legislators may enter into a contract with "any governmental body."

The Ethics Act prohibits all public servants, including those who serve part-time, from using their positions or the prestige of their positions for their own private financial gain or that of others. WV Code §6B-2-5(b)(1). However the Act properly recognizes the need to avoid penalizing part-time public servants for their public service by unnecessarily restricting their ability to engage in private business activities with the state or its political subdivisions.

It would, of course, be improper for the requester to use his official position to persuade the state agency to contract out its collection work or to unfairly advance the interests of his firm or co-counsel in securing such a contract. Absent such a misuse of the requester's position and prestige, there is no provision of the Act which would prevent him or his law firm from providing legal services to a state agency on a contingent fee basis.


Chairman